

U. S. DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

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CURVES INTERNATIONAL, INC.,)

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Plaintiff,)

DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

v.)

CASE NO. 2007-CV-807-MHT

LINDA S. MOSBARGER,)

Defendant.)

**DEFENDANT'S OPPOSITION TO INJUNCTIVE REQUESTS OF THE
PLAINTIFF**

COMES NOW the DEFENDANT, LINDA S. MOSBARGER, nee LINDA S. LEWIS, by and through undersigned counsel, and requests for this Honorable Court to deny the original Plaintiff's [Curves International, Inc.] request for injunctive relief which is set for oral argument/hearing on November 21, 2007. The true wronged party and victim in this action is Linda S. Lewis. Therefore, this request is filed for the following reasons detailed more fully in the Counterclaim filed by Linda S. Lewis this week with affidavits of support. Note also, Defendant's Opposition Brief filed herewith. See, Federal Rules of Civil Procedure 12(b)(6) [No genuine issue of material fact]; 12(c) [Affidavits filed support a denial of Curves request for injunctive relief and a total dismissal of the Curves action against Linda S. Lewis/Mosbarger] , 12(f) [Improper service of process-request to strike all affidavits lacking first hand knowledge of the facts set forth]; and the Counterclaim of Linda S. Lewis/Mosbarger based on the following Federal Rules- Fed.R.Civ.P. 13(e); Fed.R.Civ.P. 13(f); Fed.R.Civ.P. 13(h); Fed.R.Civ.P. 19 and Fed.R.Civ.P. 20. In addition to the case law of the Eleventh Circuit Court of

Appeals' standard prerequisites and burdens of proof for matters requesting injunctive relief.

In short, it is the Defendant Linda S. Lewis/Mosbardger's belief that Curves, based upon the "totality of the circumstances" will not be able to meet its burden of proof in the four (4) pronged test for injunctive relief utilized by this judicial circuit. Quoting the Eleventh Circuit:

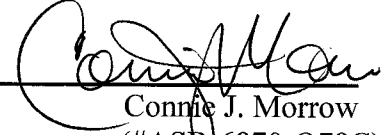
"A party requesting preliminary **injunctive relief** must show "(1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable injury; (3) its own injury outweighs the injury to the nonmovant; and (4) the injunction would not disserve the public interest." Haitian Refugee Ctr., Inc. v. Baker, 949 F.2d 1109, 1110 (11th Cir.1991). The requesting party's failure to demonstrate a "substantial likelihood of success on the merits" may defeat the party's claim, regardless of its ability to establish any of the other elements. Church v. City of Huntsville, 30 F.3d 1332, 1342 (11th Cir.1994). We have also stated that "the absence of a substantial likelihood of irreparable injury would, standing alone, make preliminary injunctive relief improper." Siegel v. Lepore, 234 F.3d 1163, 1176 (11th Cir.2000)."

See, Reese v. Miami-Dade County, 2003 WL 22025458;

Parker v. State Board of Pardons & Paroles, 275 F.3d 1032 (11th Cir. 2001); In re Bevelle, 348 Bankruptcy R. (N.D. Ala. 2006); Sammy's of Mobile, Ltd. V. City of Mobile, 928 F.Supp. 1116 (S.D. Ala 1996).

In fact, based upon the "totality" of the court record it does not appear the international corporation will be able to meet its burden of proof on any of the four tests for the necessity of injunctive relief against the victim, Linda S. Lewis/Mosbarger.

Respectfully submitted,


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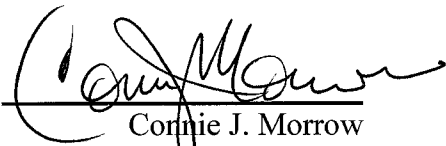
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CERTIFICATE OF SERVICE

The undersigned verifies a true and accurate copy of this document has been delivered to the following (Defendants and purported legal counsel) by placing on this date a copy of such in the U. S. mail, proper postage prepaid, on this the 14th day of NOVEMBER, 2007, and addressed as follows:

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